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No. 635

In the Supreme Court of the United States

OCTOBER TERM, 1940.

ARTHUR WELD AND LORINE KINZ,
Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondents.

RESPONDENTS' BRIEF ON APPLICATION FOR CERTIORARI

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SUBJECT INDEX

	Page
TABLE OF CITATIONS	ii
INTRODUCTION	1
STATEMENT OF FACTS	2
ARGUMENT	4
I. Is the Ordinance void upon its face in that it takes away and abridges liberty of speech, press and assemblage, and deprives of property without due process of law in violation of the 14th Amendment?	5
II. Does the Ordinance violate the due process of law clause of the 14th Amendment in that it is altogether vague and indefinite and does not create or set up any reasonably ascertainable standards of guilt?	9
III. Was the ordinance enforced and applied against petitioners in an unconstitutional manner, in that petitioners were deprived of liberty of speech, press and assemblage, and deprived of property without due process of law, in violation of the 14th Amendment?	17
IV. Did the refusal of the trial court to give the instructions requested by petitioners constitute an unconstitutional application of the Ordinance?	20
CONCLUSION	22

TABLE OF CITATIONS

	Page
Anderson v. Maloy, 19 N. W. 387	11
Carlson v. California, 310 U. S. 106	8, 15
Commonwealth v. Surridge (Mass.) 164, N. E. 580	7
Conley v. United States, 59 Fed. (2nd) 929	10
Connally v. General Construction Co., 269 U. S. 385	9
De Jonge v. Oregon, 299 U. S. 353	19
Doe v. United States, 253 Fed. 903	11
Febock v. Jefferson County, 262 N. W. 588	11
Fiske v. Kansas, 274 U. S. 380	15, 18
Hague v. C. I. O., 307 U. S. 496	6, 8, 15, 18
Hawaii v. Anduha, 48 Fed. (2d) 171	16
Herndon v. Lowry, 301 U. S. 242	15
In re Harder, 9 Cal. App. (2nd) 153	13
Knoff v. State, 192 Pac. 596	11
Lanzetta v. New Jersey, 306 U. S. 451	14
Lovell v. Griffin, 303 U. S. 444	8
McKelvey v. United States, 260 U. S. 353	13
Morgan v. Mulhall, 114 S. W. 4	12
Overhouser v. American Cereal Co., 92 N. W. 74	11
People v. Atwill (New York) 133 N. E. 364	7
People v. Eckerson, 117 N. Y. S. 418	11
People v. Friedman, 224 N. Y. S. 596	7
Price v. Gabel, 298 Pac. 444	11
People v. Galpern (New York) 181 N. E. 572	7
People v. Sternberg, 254 N. Y. S. 488	12
People v. Wilcox, 157 N. E. 509	12
Schenck v. U. S., 249 U. S. 47	21
Schneider v. Irvington, 308 U. S. 147	6, 8, 15, 18
State v. Malpass, 127 S. E. 248	11
State v. Sugarman (Minn.) 148 N. W. 466	7
Stromberg v. California, 283 U. S. 359	15, 19
Thornhill v. Alabama, 310 U. S. 88	8, 15
United States v. Prieth, 251 Fed. 946	10

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INTRODUCTION.

In conformity with the rules of the Supreme Court, it is our understanding that the purpose of the Respondents' Brief is not to present an argument addressed to the merits of the case except insofar as that is involved in a showing that the questions raised in and considered by the state courts herein were determined in accord with previous decisions of this court, and that therefore this is not a case "where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court." (Rule 38, Subdvision 5a). It will appear from

a consideration of the questions raised by petitioners herein in the light of previous decisions of this court that none of the questions were decided at variance with fundamental rules of law heretofore recognized by this court.

Four questions are presented by petitioners. As will appear from Respondents' arguments hereinafter summarized, the first and third questions are similar, although not identical, in their substance, and much of Respondents' argument addressed to each of said questions definitely bears upon the consideration of the other of said questions. However, in the interest of clarity and for the convenience of the Court in determining whether or not the writ should issue herein, the questions are considered in the order in which they are presented by petitioners.

STATEMENT OF FACTS.

Respondents desire to call to the attention of the Court the following brief statement of facts supplementing the "Abstract" of facts appearing on Pages 2, 3 and 4 of Petitioners' Brief: (Those portions of the Transcript of Record hereinafter referred to are designated by "Rec." followed by the page and line indicated).

The "picketing" alleged to have been conducted by petitioners and others occurred on a public sidewalk. (Rec. page 27, lines 1-2). The number of persons actually participating in the "picketing" varied from fifteen to twenty-five. (Rec. page 27, lines 4-7).

Because it will appear from Respondents' argument

that this is purely and exclusively an ordinance to regulate traffic, it is important that the Court have in mind the extent to which the activities of petitioners and their companions occupied the width of the sidewalk. "These persons marched in single file. Their line of march was a rough circle, and the area covered by such circle occupied the entire width of the sidewalk between the store-front and the curb, in front of the entrance to and in front of the market." (Rec. page 27, lines 9-13). "The persons in the line kept moving at a slow pace and were about eighteen inches or two feet apart." (Rec. page 27, lines 20-21). "While the marching was taking place on the sidewalk in front of the market it was almost impossible for other persons to pass by on the sidewalk. It was the line of persons marching on the sidewalk which prevented other persons from passing; it was not the crowd of spectators in the street which caused the interference with pedestrian traffic." (Rec. page 28, lines 10-15).

The foregoing testimony of the complaining witness was corroborated by Police Sergeant Risedorph (Rec. page 29, lines 7-8) and the other witnesses called by the prosecution. The Police Sergeant further testified: "It was difficult for other persons to pass by on the sidewalk while the line of persons was marching back and forth as above described, but it was possible for other persons to pass through the crowd." (Rec. page 30, lines 4-7). This testimony was also corroborated by Police Officer Fisher, who further testified "that he saw some passers-by 'elbow their way through the crowd' and that some

passers-by 'got off the sidewalk and walked around the crowd,' and that it was possible for passers-by to get through on the sidewalk 'by weaving in and out' among the persons who were marching in the line." (Rec. page 30, lines 19-24).

Officer DeCastro testified "that the line of persons marching back and forth on the sidewalk . . . . 'got so close to the building that people couldn't pass through the crowd without difficulty." (Rec. page 32, lines 16-19).

This substantial evidence—which the jury indicated by their verdict that they believed—clearly indicates the extent to which petitioners' conduct tended to interfere with the movement of other persons on the sidewalk.

ARGUMENT.

We proceed to discuss the questions raised by petitioners in the order in which said questions are presented in their brief. At the outset it is proper to set forth here Section 3—6.01 of the Oakland Municipal Code, under which petitioners were convicted:

> "Whenever the free passage of any street or sidewalk shall be obstructed by a crowd, except on the occasion of public meetings, the persons composing such crowd shall disperse or move on when directed to do so by a police officer. It shall be unlawful for any person to refuse to so disperse or move on when so directed to do by a police officer as herein provided."
>
> (Rec. page 26, lines 17-21).

I.

Question: IS THE ORDINANCE VOID UPON ITS FACE IN THAT IT TAKES AWAY AND ABRIDGES LIBERTY OF SPEECH, PRESS, AND ASSEMBLAGE, AND DEPRIVES OF PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT? (Petitioners' Brief, page 9).

As stated in the opinion of the appellate court which affirmed petitioners' conviction (Rec. page 42):

"The plain and manifest purpose of said Section 3—6.01 of said Municipal Code, upon which said section this prosecution is based, is to insure the free passage and use by the public, and to prevent the obstruction of the public streets and sidewalks of the City of Oakland.

" 'The police power of the city extends to all reasonable regulations relating to the keeping the sidewalks, streets, and public ways free from obstructions and nuisances and to all proper restraining regulations relative to the use thereof.' (McQuillan on Municipal Corporations, Sec. 458).

"It has been repeatedly held by our courts that it is the duty of a municipality, and the municipality has power, to keep the streets and sidewalks clear for the free use and passage of traffic and pedestrians."

This fundamental rule of law is not challenged by petitioners (Petitioners Brief, page 10, lines 13-16) but it is contended that the ordinance is void because it does

not expressly authorize "peaceful picketing" in which—it is claimed—petitioners were engaged at the time of their arrest. In other words, it is petitioners' position that the right to picket is absolute and paramount to the right of the public to use streets and sidewalks. That this is not the law is clearly established by previous decisions of this Court as well as by decisions of courts of the highest appellate jurisdiction in the several states.

In two of the very cases which petitioners cite in support of their position here, the paramount right of the *public* to the use of the streets is affirmed. In *Hague* v. *C. I. O.*, 307 U. S. 496, the Court said:

> "The privilege of a citizen of the United States to use streets and parks for the communication of his views on national questions may be regulated in the interest of all; *It is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order;* but it must not, in the guise of regluation, be abridged or denied."

And in *Schneider* v. *Irvington,* 308 U. S. 147, the Court used the following language:

> *"Municipal authorities . . . . have the duty to keep their communities' streets open and available for the movement of people and property, the primary purpose to which the streets are dedicated.* So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or distribution of literature, it may lawfully

regulate conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; *a group of distributors could not insist upon a constitutional right to form a cordon across the street and allow no pedestrian to pass who did not accept a tendered leafet* . . . . Prohibition of such conduct would not abridge the constitutional liberty since such conduct bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

See also:

Commonwealth v. *Surridge* (Mass.) 164 N. E. 580;
People v. *Atwill* (New York) 133 N. E. 364;
People v. *Galpern* (New York) 181 N. E. 572;
People v. *Friedman*, 224 N. Y. S. 596;
State v. *Sugarman* (Minn.) 148 N. W. 466.

The ordinance in question here is purely and exclusively an ordinance designed to insure the free use by the public of the streets and highways of the city. Not one syllable of the ordinance can be construed as violating any provision of the Fourteenth Amendment of the United States Constitution or the Bill of Rights.

There is no difference of opinion between petitioners and respondents about the right of every person to freedom of speech and assemblage or about the right to engage in peaceful picketing. None of the cases cited by petitioners hold, however, that these rights are absolute or paramount;

quite the contrary, as we have shown by quoting from the opinion in the *Hague* and *Schneider* cases. In *Carlson* v. *California,* 310 U. S. 106, and *Thornhill* v. *Alabama,* 310 U. S. 88, the ordinances in question absolutely prohibited individual picketing, without reference to the question of whether or not such picketing interfered with the passage of traffic. In fact, in the *Carlson* case the Court called attention to the fact that during the period within which the picketing took place "the traffic of persons and automobiles along the highway was not obstructed." In *Schneider* v. *Irvington, supra,* and *Lovell* v. *Griffin,* 303 U. S. 444, the ordinances held unconstitutional prohibited the distribution of handbills and other literature upon the streets, either absolutely or without a permit issued by a city official; the ordinances had no relationship to the movement of traffic upon the highway. As said in the *Lovell* case, the ordinance "is not limited to ways (of distributing literature) which might be regarded an inconsistent with the maintenance of public order or as involving disorderly conduct . . . . . or the misuse of the streets." Similarly, in *Hague* v. *C. I. O., supra,* the ordinances considered prohibited public meetings and the distribution of literature without permits from a city official. The ordinances did not make public comfort or convenience in the use of the streets the standard of official action.

None of the cases cited had to do with an ordinance identical with or similar to the one involved herein. This ordinance is purely a traffic regulation, and the power of the city to enact such an ordinance is well established

by the general rules of law and by the previous decisions of this court, particularly in the *Hague* and *Schneider* cases.

II.

Question: DOES THE ORDINANCE VIOLATE THE DUE PROCESS OF LAW CLAUSE OF THE FOURTEENTH AMENDMENT IN THAT IT IS ALTOGETHER VAGUE AND INDEFINITE AND DOES NOT CREATE OR SET UP ANY REASONABLY ASCERTAINABLE STANDARDS OF GUILT? (Petitioners' Brief, page 11).

In *Connally* v. *General Construction Co.* 269 U. S. 385, the Court held that statutes were not to be regarded as vague or ambiguous where

> "they employed words or phrases having a technical or other special meaning, well enough known to enable those within their reach to correctly apply them (citing cases) or a well-settled common law meaning, nothwithstanding an element of degree in the definition as to which estimates might differ."

This states the general rule as to the certainty and accuracy which must characterize the language of a penal statute.

Petitioners complain that the ordinance contains no definition of the words "free passage," "obstructed," "crowd," "disperse" and "move on." It is true that the ordinance contains no definition of these words, but it is

submitted that the words themselves and their common, ordinary and accepted meanings require no definitions.

The word "obstructed" is the past tense of the verb "obstruct" and has the meaning of:

> "1. To block up; to stop up or close, as a way; to place an obstacle in, or fill with obstacles or impediments to passing; as, to obstruct a street, the veins.
>
> "2. To be, or come, in the way of; to hinder from passing, action, or operation; hence, to hinder; impede; retard; as, clouds obstruct the light; unwise rules obstruct legislation.
>
> "3. To cut off the sight of (an object); shut out." (Webster's New International Dictionary, Second Edition.)

This definition has been universally accepted by the courts when called upon to define the meaning of the word.

In *Conley* vs. *United States,* 59 Fed. (2nd) 929, the appellant had been found guilty of contempt under Section 268 of the Judicial Code. The court stated that:

> "There should be no uncertainty with respect to the meaning of the word 'obstruct' as employed in this contempt statute. In the dictionary it is defined 'to hinder or prevent from progress; check; stop; also to retard the progress of; make the accomplishment of, difficult and slow.' It has many synonyms of like import." (P. 936.)

In *United States* v. *Prieth,* 251 Fed. 946, the appel-

lants appealed from a conviction under the Espionage Act for their conspiracy to "unlawfully and willfully *obstruct* the recuriting and enlistment service of the United States, . . ." There the court had occasion to observe the meaning of the word "obstruct", and states on page 949:

> "The verb 'obstruct' is broad. It is defined in Webster's New International Dictionary (among other definitions) as synonymous with 'to impede, retard, embarrass, oppose,' and as 'to be, or come, in the way of; to hinder from passing, action, or operation; to stop, impede, retard'; . . ."

The following cases likewise support the same definition:

See:

People v. *Eckerson*, 117 N. Y. S. 418;
Price v. *Gabel*, 298 Pac. 444;
Overhouser v. *American Cereal Co.*, 92 N. W. 74;
Knoff v. *State*, 192 Pac. 596;
State v. *Malpass*, 127 S. E. 248;
Doe v. *United States*, 253 Fed. 903;
Anderson v. *Maloy*, 19 N. W. 387.

The word "crowd" has likewise been construed on a number of occasions. In *Febock* v. *Jefferson County*, 262 N. W. 588, the defendants had demurred to a complaint founded upon a state statute making a county liable for injury to person or property by mob or riot. The court in defining the words "mob" or "riot" had occasion to define the meaning of the word "crowd' stating:

". . . . the word 'crowd' as used in those def-

initions is given its well recognized meaning of 'throng', 'multitude,' (Webster's Dictionary); a numerous collection of persons or things gathered closely together."

Likewise see *People* v. *Sternberg*, 254 N. Y. S. 488, and *Morgan* v. *Mulhall*, 114 S. W. 4, in which a Missouri court held that two or three would constitute a "crowd" within an averment in a petition in an action for negligently shooting when a pistol was fired into a "crowd."

See also

People v. *Wilcox*, 157 N. E. 509.

The phrase "free passage" should give no person of common understanding any difficulty as to its meaning. The word "free" is defined as:

"I. Having liberty; not in bondage.

"II. Uncontrolled; unrestrained.

"III. Unconfined; unrestricted."

(Webster's New International Dictionary, Second Edition.)

and the word "passage" is defined as:

"1. Act of passing; transit from one place to another; movement from point to point; a going by, on, over, across, or through; entrance or exit; . . . .

"2. A means of passing; a way; road; path; channel or course through or by which one passes; way of exit or entrance; . . ." (Webster's New International Dictionary, Second Edition.)

The definition in the dictionary of this phrase is followed by this Court in *McKelvey* v. *United States*, 260 U. S. 353. In that action the petitioners were indicted, tried, and convicted ". . . . upon a charge of unlawfully pre venting and obstsructing, by means of force, threats and intimidation, free passage over and through certain unoccupied public lands of the United States . . ." During the course of the opinion the Court had occasion to state on page 304:

> "Another ground is that the words of Par. 3, 'or shall prevent or obstruct free passage or transit over or through the public lands,' refer to a continuing obstacle to passage or transit in general, such as a fence or the maintenance of an armed patrol, and not to a transient obstacle to passage or transit by particular persons on a particular occasion, such as is charged here. We think this ground is not tenable. The words 'by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means,' are as comprehensive of transient means of obstruction as of continuing or relatively permanent means. Besides, it is 'free' passage or transit that is to be unobstructed. *Passage or transit is free in the sense intended when it is open to all.* When some withhold it from others, whether permanently or temporarily, it is not free." (Italics ours.)

The Appellate Court of California in the recent case of *In re Harder*, 9 Cal. App. (2nd) 153, had occasion to use the words "obstruct" and "free use and passage"

and seemed to have no difficulty in understanding its meaning. There the court stated:

> "While there may be some question as to the power of the Board of Supervisors to exclude people from . . . using the public highway so long as they do not obstruct the free use and passage thereof by other persons . . ."

Finally, the word "disperse" is found to have a dictionary meaning as follows:

> "1. To cause to break apart and go different ways; to send or drive into different parts; to scatter.
>
> "2. To cause to become widely separated; to distribute; as, the Jews are dispersed among all nations.
>
> "3. To spread or distribute from a fixed or constant source . . ." (Webster's New Internation Dictionary, Second Edition.)

It appears that the meaning of this word is so clear and so unambiguous that the courts have never had occasion to construe it.

The words alleged to be uncertain and vague, on the contrary have very definite and clear meanings.

In none of the cases as cited by petitioners were any of the words or terms considered, which petitioners here complain of as vague and indefinite. In *Lanzetta* vs. *New Jersey*, 306 U. S. 451, a New Jersey statute was held void which defined a "gangster" as "any person not

engaged in any lawful occupation, known to be a member of a gang." The statute did not necessitate proof of any unlawful *actions* of a defendant; mere association with a "gang" constituted the crime. Here, on the other hand, in order to constitute a violation of the ordinance, it must appear—and it was proved—that the accused was a member of a crowd *and* that the crowd obstructed the free passage of the street or sidewalk.

The Hague, Schneider, Carlson and Thornhill cases, cited by appellant in this connection, have been sufficiently discussed above to show that they do not support this contention of petitioners.

In *Fiske* vs. *Kansas*, 274 U. S. 380, the Court rejected as invalid the Kansas Criminal Syndicalism Act, because the evidence did not show that the I. W. W. (for which the defendant was soliciting members) taught or advocated any crime, violence or other unlawful conduct. In *Herndon* vs. *Lowry*, 301 U. S. 242, the defendant's conviction of violating a Georgia statute was reversed because—as applied to the facts of the case—the statute was unconstitutional; it denounced as a felony, "any act, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State." The question of guilt was held to involve pure speculation. Similarly, in *Stromberg* vs. *California*, 283 U. S. 359, the California statute which was held invalid made it a felony to display a red flag for certain purposes. The conviction was reversed because it could not be determined but that the jury had based its conviction

on one unconstitutional clause of the statute, although the two other clauses of the statute were upheld.

On page 14 of their brief, petitioners cite in support of this contention, *Hawaii* vs. *Anduha,* 48 Fed. (2d) 171. The court there rejected as unconstitutional a Hawaii statute making it a misdemeanor to habitually loaf, loiter or be idle upon any public street or highway, because the words "idle," "loiter," and "loaf" implied no wrong doing or misconduct. It is significant that the court said "the right of the territory, or one of its municipalities, to legislate against the obstruction of public streets and highways, whether caused by idlers or others, is not open to question." The Hawaii statute had no relation to the interference or obstruction of traffic, as does the ordinance in the case at bar.

On page 13, line 2 of their brief, petitioners complain because this ordinance does not "indicate just what activity they may engage in." This is not the purpose or intent of the ordinance; it does indicate—to petitioners and to him who reads—that they may *not* obstruct the free passage of the street or sidewalk, and it leaves them free to engage in any lawful activity which does *not* interfere with the free use of the streets and sidewalks by the public. The ordinance is not invalid merely because the question whether there was interference with the free passage of traffic is, of necessity, a question of fact in each case, depending upon the circumstances of each case. It is clear from the eivdence that the conduct or act of which petitioners were convicted was their own

refusal to disperse and not the presence of four or five hundred persons, who were naturally attracted to the scene by the actions of petitioners and their companions. If petitioners had not obstructed traffic and—further—had not refused to "move on" when ordered to do so by the police, they would not have been arrested and convicted under the city ordinance. Not a shred of evidence to contradict this last statement appears in the record, and there is no justification for the inference which petitioners attempt to draw, that they were discriminated against in the enforcement of the ordinance.

No reasonable person can contend that these petitioners did not clearly understand the purpose and meaning of every word in the city ordinance or that they were not expressly advised, prior to their arrest, that they must stop obstructing the sidewalk. The question raised by petitioners has been decided in this case "in accord with applicable decisions of this Court." (Rule 38, subdivision 5a.).

III.

Question: **WAS THE ORDINANCE ENFORCED AND APPLIED AGAINST PETITIONERS IN AN UNCONSTITUTIONAL MANNER, IN THAT PETITIONERS WERE DEPRIVED OF LIBERTY OF SPEECH, PRESS AND ASSEMBLAGE, AND DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT? (Petitioners' Brief, page 14.)**

To paraphrase petitioners' contention on this point,

they claim that, conceding that the ordinance was valid on its face, petitioners should not have been arrested for a violation thereof, because at the time they were engaged in "peaceful picketing". Let it be said, here and now, that it is not respondent's position that petitioners were arrested and prosecuted for any "peaceful picketing"; they were arrested and prosecuted because they were members of a crowd which obstructed the free passage of a sidewalk and because, after they had been warned, they refused to disperse. If petitioners' claim were to be sustained, then in any case where a number of persons—whether it be fifteen to twenty-five, as in this case, or one hundred and fifty, or five hundred—were gathered on a public sidewalk or street, engaged in "peaceful picketing" or in "window-shopping", they could not be dispersed, no matter how complete was the obstruction or absolute stoppage of traffic. This cannot be true. As this Court has said in the *Hague* case, supra, page 5, the right of peaceful picketing "is not absolute but relative and must be exercised in subordination to the general comfort and convenience"; and in the *Schneider* case, supra, page 6, this Court said, "The primary purpose to which the streets are dedicated" is "the movement of people and property" thereon. It is again apparent that the state court's decision in the case at bar on this point is "in accord with applicable decisions of this Court."

As for the cases cited by petitioners in this connection: All but one of them have hereinabove been distinguished.

In *Fiske* v. *Kansas,* supra, *Herndon* v. *Lowry,* supra,

and *Stromberg* v. *California,* supra, the convictions were reversed because the evidence did not show that the actions of the defendants had involved any violence or inciting to violence and did not involve the violation of any statute directly or indirectly punishing other unlawful conduct related to the public safety, comfort or convenience. In *De Jonge* v. *Oregon,* 299 U. S. 353, the Court held unconstitutional, as applied to the facts of the case, the Oregon criminal syndicalism law, because the evidence showed that the defendant spoke at an orderly and peaceful public meeting and there urged the purchase of Communist literature which, however, did not itself advocate violence or other unlawful conduct. The Court held that under the statute as the state court had applied it, any speaker at the same meeting on any subject would have been guilty, and, accordingly, as applied to the facts, the statute violated the due process clause of the Fourteenth Amendment. In other words, the evidence did not disclose—as the evidence here does—an interference by the defendant with the public safety or convenience.

IV.

Question: DID THE REFUSAL OF THE TRIAL COURT TO GIVE THE INSTRUCTIONS REQUESTED BY PETITIONERS CONSTITUTE AN UNCONSTITUTIONAL APPLICATION OF THE ORDINANCE? (Petitioners' Brief, page 7.)

All that we find in petitioners' brief in the nature of argument in support of this contention, is the short sentence beginning at the foot of page 15 of the brief.

The jury was fully and correctly instructed as to the rights of petitioners to engage in peaceful picketing (see the instructions actually given by the Court which are set out on pages 35 and 36 of the Record). Instructions 1, 2 and 3, given by the trial court, embody the substance of petitioners proposed instructions numbered 1 to 7, inclusive, in so far as said proposed instructions correctly stated the law. In so far as said proposed instructions told the jury that petitioners must be acquitted *merely because* they were engaged in "peaceful picketing", they were not accurate statements of the law, as has been hereinabove set forth under our discussion of the previous Question.

Petitioners' proposed instruction number 8 would have erroneously instructed the jury that, to support a conviction there must be a specific intent to obstruct the sidewalk "for the purpose of preventing passers-by from passing along the said sidewalk." (Rec. page 38). The ordinance did not require proof of any such intent. The

crime charged in the complaint was made up of four elements: (1) That a crowd was obstructing the free passage of the sidewalk; (2) That petitioners were members of said crowd; (3) That a police officer directed the crowd and petitioners to disperse and move on; and (4) That petitioners failed and refused to obey the command. It was necessary under the general California statute that there be "a union, or joint operation of act and intent" (California Penal Code, Section 20)—and by their verdict the jury so found. Such general intent "is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused." (Calif. Penal Code, Section 21). It was not necessary that there be any specific intent or wilfulness.

On page 16 of their brief petitioners complain that the application of the ordinance was not addressed to "any substantive evil . . . which the state has the right to prevent." What has been hereinabove said is sufficient to show that the sole and exclusive purpose of the ordinance and of its application in the case at bar was to insure to the public the free and unobstructed passage of the public sidewalk. Such was not only the right but the duty of the state and of the city authorities. The obstruction of the sidewalk by the crowd, of which petitioners were members, constituted a "substantive evil" within the meaning of the rule stated by this Court in *Schenck* v. *U. S.*, 249 U. S. 47, cited by petitioners in this connection. There, convictions for violating the Espionage Act of 1917 were sustained. Mr. Justice

Holmes held that the right of free speech was not absolute but was subject to considerations of the general public safety and welfare. Here, the petitioners were not arrested or prosecuted by reason of any word spoken or act done by them, except in so far as their actions were inconsistent with the free passage of traffic upon a public sidewalk.

CONCLUSION.

Athough petitioners concede that a city has both the right and duty of regulating the use of its streets (petitioners' brief, page 10), it seems to be their position that any group of persons desiring to voice and exchange their views upon any subject whatever, may at any time occupy the whole or any portion of any street or sidewalk, to the hindrance, or even to the exclusion, of other members of the public, with impunity, and that their actions in this respect are not subject to any regulation whatsoever. If this position were to be sustained, the inevitable result would be that the law enforcement authorities of every community would be powerless to prevent the obstruction of the streets and sidewalks by large groups of persons assembling thereon, where no violence occurred and no threats were made, albeit that the "free passage" of public highways and sidewalks was being seriously interfered with.

Not one of the questions presented by petitioners has been decided by the state courts herein at variance with

the applicable decisions of this Court, and the writ of certiorari should be denied.

Respectfully submitted,

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Of Counsel for Respondents.

Due service and receipt of a copy of the within is hereby admitted this _____ day of January, 1941.

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Counsel for Petitioners.